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HAY AND GRAIN Unrivalled Perfumes,

Feed for Fowls, Etc.,

26 Telephone No. 25%. MOTICE ! ONAND APTERTHIS DATE THE Hawaiian Gazette.

WEDNESDAY, APRIL 8 1885 ert of the Hawaiian Islands-

M. S. GRINDAUM AND M. LOUISSON, COM-PRINCES THE FIRM OF M. S. GRINDAUM & COMPANY, VS. THE HEETA STOAM PLANT ATTON CO., C. M. COOKE, H. MACPARLANE & CO AND ALEXANDER KENNEDY. Before Chaucillor Judd. Opinion.

(1) The bill sets forth that the plaintiffs on e 16th August 1883, took a vortgage from e Heeis Sugar Plantation Company a corpor-ion estabil@ned under the laws of the State the Heeis Sugar Plantation Company a corporation established under the laws of the State of California, upon all the property constituting the Heeia Sugar Plantation, to secure the repayment of \$60,000, in the three years, with interest somi-annually; and, that \$60,000 and more have been advanced by plaintiffs to carry on the phantation; (2) that the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1881 tax and the semi-annual interest (2600,) due on the 16th February 1882 tax and t

upon the lease of the Ahupuas of Heeia from C. R. Bishop and wife to John McKeague, and important section of the original act of Lister Lister, and the period of 13 years additional to October 1 1894. That after the date of the mortgage to H. Macfarlane & Co., can foreclose the mortgage for money and before the date of nortgage to plaintiffs, the lease aforesaid was cancelled with the knowledge and consent of H. Macfarlane & Co., by a written agreement dated february 1 1885 and recorded; that a new lease of the Ahupuan of Heeia was executed to the Heeia Plantation Cumpany dated January 29 1883, for the term of 22 years commencing October 1 1882, and that thereby H. Macfarlane & Co. surpties does not in my opinion apply.

plaintiffs, principal and interest, on their That in default of payment the Heeia Plantation Company may be foreclose air equity of redamption in the mortgaged

tinat said mortgage of H. Macfarlane & Co, the availed security only to the extent of the money. They paid this first through the flow money advanced by H. Macfarlane & Co, to said Julio McKeague and Alexander Kennody.

7. And for process and general relief.

The bill is dated July 3 1884. On the 23 July 3 1884. On the 23 July, John McKeague by his guardian T. A. Lloyd was made a party defendant to this action, on the ground that by a decree of this court in a former case McKeague is entitled to a certain equity in the property involved in this controversy.

The paid this first through the money and this tour day paid this first through the mortgage of the money in the mortgage.

Jones Sec. 376 says that "the agreement under which advances to a certain amount are to be made need not be in writing to be binding and effectual against subsequent liens." Sustained by New Jersey and Penn, cases, not accessible. But the agreement must be made to the opinion.

The defendant C. M. Cooke submits to such as derived and the contemporaneous and no subsequent or all agreement of the Court as may be made.

The defendant Kennedy says that he disabled his copartnesship with McKeague at the disabled his copartnesship with McKeague at the time of his sale to him of his interest in he plantation for \$51,500, and that the mortgage in question was given him to secure part of the purchase money and was not intended as a fraud upon any one; that the desired as a fraud upon any one; that the flowing Sugar Plantation Company purchased he premises from McKeague with full knowledge of respondent's mortgage and assumed anyment of same and that plaintiffs had full

of which the original mortgagee is a member. Certainty neither the mortgage roar his astacoustic affairs a satisfactorily with the subsequent mortgage could have any greater equity. He took his mortgage with knowledge of the amount for which the prior mortgage made by McKeague and Kannedy and L. Mecfarlane was by him assigned to G. Macfarlane was by him assigned to G. Macfarlane & Co., on the 1st day of Antara A. D. 1881: that the moneys advanced by persons not parties to the original mortgage.

I know of no principle of law or equity them, to secure which the mortgage was ven, were made to carry on the plantation. McKeague and Kennedy was used to equity. In Joslyn vs. Wyman S. Albert McKeague and stead as his contained to mortgage was ven, were made to carry on the plantation. McKeague and Kennedy and that advances ere we made until Kennedy sold to McKeague and acted as his contained to make advanced to the carry on the plantation. McKeague and acted as his contained to make advanced to the carry of the plantation of the mortgage was ven, were made to carry on the plantation. These witnesses say that the only difference in McKeague and Kennedy and that advances ere we made until Kennedy sold to McKeague and therefore the mortgage was not the did that "although a mortgage in force as security for a new indebtedness not more than the mortgage was not continued to make advanced to the mortgage was the mortgage was at had been since the fall from his horse.

I must consider Kennedy and send, and that if McKeague with keepen and even mentioned the plantation: that Kennedy was dissortished with McKeague and even mentioned the plantation: that Kennedy was dissortished with McKeague and even mentioned the plantation: that Kennedy was dissortished with McKeague and the plantation: that Kennedy was dissortished with McKeague and the plantation: that Kennedy was dissortished with McKeague and the plantation: that the money and the plantation: that the money and the plantation: that the money and the plantation: that the

it amounted to \$45,868.15, over and the amount of \$40.000 secured by the age and that this amount was paid to talents by the said company on the trans-t the agency to the plaintiffs. They admit heir said mortgage includes the assign-of a lease by C. B. Bishop and wife to esgue and that afterwards they made a

The first question raised is whether the ortgage dated July 1 1881 to H. Macfarlane Co, covers and is secured upon the lease the Ahupua of Heeia. On the 1st October 509 the owners of this land Mrs. C. R. Bishop in her lusband had by an instrument in and recorded in Book 29 folios 295 extended to John McKrague the lease legia for a term of thirteen years from the October 1881. This lease would not by error expire until October I 1891. Macariane's mortgage recities this lease in the chedule of property mortgaged. But after the Heera Sugar Plantation Company of Cali-tornia had purchased the plantation from McKengoe, a new lease was obtained by it for

y-two years from the 1st October 1882

increased rental. This lease is dated It was admitted by commed for respondents at this new lease is not within the Macfar-on mortgage. But is contended that as be furlance paid the increase rent under the new issue, and as the cancellation or the reason overed by his mortgage is on record, he was bound by the notice thus acquired and it consents to a consent and ratification of the whole transaction. The evidence shows that Martariane did not know of the cancellation and defendant were partners and that w lesse, and as the cancellation of the least ordinary disbursements, not as moriga-in possession. The title of the lessee was in by way of mortgage and he did not

and the recessary to divest him of title. In our becree of foreclosure the Macfarlane mort-age is to be held to cover the old lease of \$66 and lis renewal of the 1st October 1839, at not the new lease of January 29, 1883. and further savance to the new lense of January 29, 1883.

This next point and one of more difficulty is chether the advances made by H. Macfarlane & Co., to John McKeague after Kennedy sold out or to the Hesia Sugar Plantation Company after their purchase from McKeague as well as advances made by G. W. Macfarlane & Co., to John McKeague as well as advances made by G. W. Macfarlane & Co., to John McKeague as well as advances made by G. W. Macfarlane & Co., to John McKeague as well as advances made by G. W. Macfarlane & Co., to John McKeague as well as advances made by G. W. Macfarlane & Co., to John McKeague as well as advances made by G. W. Macfarlane & Co., to John McKeague as well as a mortage of the agency to visit of the plantation, for \$50,000, and adjacetiff wave defendant a mortage of the

H. discrarance testines that the account sha agreety of the plantation was on August 1, 1881, transferred to 6, W. MacIarlane & Co., of which firm he became a member July 1, 1881; also that, though the date of the assignof which firm he became a member July 1, 1881; also that, though the date of the assignment of the mortgage appears to be "isrday of August 1881," it was in fact executed on the 21st day of July 1883 and the date in the issumment was changed to "lat day of August 1881." This also appears by an inspection of the instrument. It was recorded after this suit was begun.

No question is made as to the assignability.

This yow is further sustained by all theiry ment dated 20th August 1883 between Henry Macfarlane & Co and the Resia Plantation Sugar Company, by which Macfarlane releases the company as granter of the mortgagor Mc Kesque from certain obligations in the

Mc Keague from certain obligations in the mortgage as to consigning the engars to him and waives the breaches of condition thereby; extends the time of payment of the mortgage to 28th August 1884, and covenants that no demand shall be made until that day; that previous breaches of covenant and condition are waived; that the company agreed to pay the amount of the mortgagee debt fixed at \$40,000 in one year from date. This instrument is signed and acknowledged by Henry Macfarlane of H. Macfarlane & Co., and indicates that at that late date H, Macfarlane and not 6. Wi Macfarlane & Co. exercised ownerplaintiff was then over \$70,000, and which he was utterly unable to pay. The plaintiff offers to reconvey the said one fourth of the plaintiff of the defendant on his repaying plaintiff \$14,000, ambinitiest received by him from the plaintiff, and reimbursing plaintiff his share of the expense and assuming his share of the lia-bilities.

secure the debt due to H. Macfarlane & Co., the parole assignment of a merigage of real estate accompanied by endorsement of mortgage was, among other property, the said mortgage was, among other property, may be and delivery of mortgage deed is not inspect the Abupusa of Heeia from valid by our statute of frauds which omits an independent of the machine of the parole assignment of a merigage of real estate of the transaction of the said of first one fourth, as set forth in the bill of the said of first one fourth, as set forth in the bill of the said of first one fourth, as set forth in the bill of the said of first one fourth, as set forth in the bill of the said of first one fourth, as set forth in the bill of the said of first one fourth, as set forth in the bill of the said of first one fourth, as set forth in the bill of the said of first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth, as set forth in the bill of the said one first one fourth.

hupuan of freess
instation Company dated January 29 1883,
and attention of 22 years commencing October
1882, and that thereby H. Macfarlane & Co.
ast the security of said leasehold of the lared
a deviation from the contract do not apply

fendant had told plaintill he would tak sum offered and the transaction was comp Co., was paid out in pursuance of the mort-gage for future advances, so I think that plain-liffs cannot now question it.

The answer avers that the sum of \$50,000 a fair and honest price, admits the payms \$10,000 of the purchase money and that a fair and honest price, admits the paymer \$10,000 of the purchase money and that S

In I yol., Jones on Mortgages Sec. 373, the author says "If the mortgage contains enough to show a contract between the parties, that it Keague, the answer admits that McKe author says a contract between the parties, that it is to show a contract between the parties, it is sufficient to parties the parties and the e or scentity upon the said base of the protection as a bona fide purchaser." It canimpute of Heeis,

in the said that Grinbaum & Co. did not know

it that it, W. Macfarlane & Co. had advanced

for a sea voyage and on his return
decidedly a great deal better in hody
and was like what he had formerly

The defendant C. M. Cooke submits to such contemporaneous and no subsequent oral agree-

he premises from McKeague with full knowedge of respondent's mortgage and assumed asymmet of same and that plaintiffs had full the purpose is stated to be the furnishing and the purpose of the plaintiffs have any advances and took their mortgage subject to respondent's mortgage, and plaintiffs have sential to a subsequent murtgage whether the monty be advanced by the original mortgage and as to other matters they are to be made, and it is unestantial to a subsequent murtgage whether the monty be advanced by the original mortgage and as to other matters they are to be made, and it is unestantial to a subsequent murtgage whether the monty be advanced by the original mortgage and as to other matters they are to be made, and it is unestantial to a subsequent murtgage whether the mortgage and as to other matters they are to be made, and it is unestantial to a subsequent murtgage whether the mortgage and as to the agency of which the original mortgage is a member.

It is is in evidence that Dr. Kennedy was in the purpose is stated to be the furnishing and the purpose is stated to be made, and

Macfarlane was and is a partner, and who has taken a conveyance from him in a he was anxious to close out his interes. W. Macfarlane & Co., continued to knowledge of the facts, in obtaining a release idends or profits from the plantation. He even to carry on the plantation until the June 1882, on which day McKeague to allow this as it is in direct violation of his to allow this as it is in direct violation of his to allow this as it is in direct violation of his total type and it has been said unstranged and is now due to the said unstrained as a similar case, Stane to the said unstrained dowing with interest: that on the 1st July 82, the plantation having passed into the securior of the Hecia Sagar Plantation Company, a new account was opened with it and appointents advanced money to the company of the plantation until 1830 (1930) and superior to that of the mortgager; citing 2 Story Eq. Jur. Soc. 1953 N. 3. See 1981 (1930) and McKeague undertook to hear this made and more of the plantation until 1830 (1930) and superior to that of the mortgager; citing 2 Story Eq. Jur. Soc. 1953 N. 3. See 1981 (1930) and McKeague undertook to hear this in addition to the 834,399. This would put the

The case of Taylor vs. Post, 37 Hun 449 is dition to the \$34,590. This would apparently opposed to this view. It decides plantation at a valuation of \$271,348,1 that a mortgage to secure future advances is valid for that purpose only to the original firm which was Mortgages and it could not by parol be made to cover or stand security for new indebtedness to a successor to the firm. But this was a bill of foreclosure by the parid was "ridiculous." The plantation we firm that the price McKeague it was a point of the country of the parid was "ridiculous." The plantation we firm that the price McKeague it was a point of the country of the parid was "ridiculous." lease to the Hecia Sugar Company, but deny that the first lease to McKengue the mortgagee's administrator and does not effect the question whether a junior mortgagee can take this position.

I think that plaintills having full knowledge bought without his knowledge. He says that a large proportion of the sums advanced in June, 1882, when Boss took charge, under the H. Macfarlane & Co. mortgage, was advanced by G. W. Macfarlane & Co., equity will not permit them to dispute the same.

As regards the Kennedy mortgage, it will be governed by the findings of fact and of law as made by me in the case of John McKesgue whise reading. The transfer of \$60,000 for the plantation, and yet he considers the price he obtained two advanced by G. W. Macfarlane & Co., equity will not permit them to dispute the same. his guardian T. A. Lloyd vs. Kennedy A decree of foreclosure in accordance with

aw and the principles here enunciated will a signed on presentation, and a reference is promising. And we have the evidence nounts due on the several mortgages.

A. S. Hartwell and W. R. Austin for plain-between April, 1878, and June, 1881, a amounts due on the several mortgages.

A.S. Hartwell and W.R. Austin for plaintiffs; F. M. Hatch for defendants, Kennedy this about \$100,000 was in a new unil other permanent improvements, and the those years all but about \$50,000 had and Macfarlane; W. R. Castle for Cooke, Honolula, March 12, 1885.

Supreme Court of the Hawaiian Islands ... In Equity. OHS MCKEAGUE, BY HIS GUARDIAN, T. A.

LLOVE, VS. ALEXANDER KENNEDY. Before the Chancellor, Opinion,

charlane did not know of the cancellation the old lease or the making of the new se at the time they were executed, but and of them afterwards. I think that Machan are payment of rent on the new lease is a to be taken as a consent that he should se his signify on the old lease. He paid he 20th February, 1879, defendant conveyed to plaintiff, for the consideration of \$15,000 one undivided fourth of the plantation, subject plaintiff's assuming a like share of the delaccount of the estate, which then amounted over \$70,000. That on lat July, 1881, plain iff and defendant made a mortgage to H. Mac lane & Co. to secure payment of \$20,000

of Nesser I cannot doubt. Of these negotivitions Kennedy had come knowledge, for he says he told McKeague "to have nothing to do with Jews," when McKeague told him he was going to sell out to a California company for one million dollars.

In a case docaded by me July 3,1883 Appha re, Feory, Lind occasion to define the princi-ples upon which equity will interfere where great advantage is taker of a weak intellect to secure an unconsciousble largain with a gressly dispropertionate consideration. In as advances made by G. W. Mactariane & co-subsequent to the transfer of the agency to that firm, are covered by the mortgage to H. Macfarlane & Co. If Macfarlane testifies that the account and such cases imposition or undue influence wil I find such circumstances in this case an \$2500 in time months. \$2500 in twelve months. \$5000 in two years.

am of the opinion that the mortgage under consideration should be concelled. Decree accordingly, A. S. Hartwell and W. R. Austin for plaintiff; P. M. Hatch for defendant. Honolulu, March 12, 1885. A new electro-nagnet, claimed to be considerably more powerful than the ordi

of the distriment. It was recorded after this suit was begun.

No question is made as to the assignability of the Macharlane mortgage. It runs in the habendum chanse to the mortgage H. Macharlane and H. Macharlane mortgage H. Macharlane and H. Macharlane considerably form, has been produced by Mons. A. Ricco, of Palermo, Serily. A long strip of shaders have doing business as H. Macharlane & Co, their beirs, executor, administrators and assigns.

It was not assigned until the 21st day of July 1863, several days after the execution of gage to the defendant (24 Soptember, 1881,)

the mortgage to Messrs. Grinbaum & Co. the plaintiff was in a condition of countal incapacity for the transaction of important business, and did not know or comprehend the inces, and did not know or comprehend the inces, and did not know or comprehend the inces, and did not know or comprehend the incurrence and effect of his act in making the mortgage and notes, and that the consideration role of conductor and magnetic substance. tizes not only the nut but also each layer of the iron coil, which plays the double role of conductor and magnetic substance. for the mortgage was grossly disproportioned to the value of the property, and that the plaintiff was induced to make the mortgage by

General Advertisements. FROM LIVERPOOL.

the suggestion, contrivance and unduo infla-ence of defendant, and by an unfair and dis-

bonest advantage of the plaintiff's mental in-capacity, who well knew the circumstance and that the total liabilities assumed by the

Keague, the answer admits that McKe had met with an accident between 1878 1880, which affected his health, and th

in 1881 McKeague had gone to San Fra-for a sea voyage und on his return "In decidedly a great deal better in hody and

return to Ireland, because he could get idends or profits from the plantation.

time to buy Kennedy out, and suvised his let him alone, and used all the arguments could. McKeagne said he would not buy

years later, at a rate of \$271,000; was fair an

There is evidence that in the year 1881, al

plantation stocks and investments were high and the prospects of the sugar interest very

paid off from the crops. But it must be in using that, though the mill was now

good, and the crop at the time of McKer fall from his horse, was a good one - ( 500 tons)—he neglected cultivation after

and the plantation had ran down so that it quired great expenditure to bring it up a after Captain Ross took the management.

I think that Kennedy was ionincere who cold Mr. Cecil Brown that he did not car

sell to McKeague. His answer and deposi show that he was anxious to get out of a n ter that poid him nothing and burdened with liabilities, and I am led by all the fac-

the case, to the conclusion that he took an e conscionable advantage of an enterplied int lect to secure for himself a morigage for

amount grossly disproportionale to the val-of the property, taking everything into on

That McKeaghe was greatly influenced is consenting to this bargain by the contempora needs, alluring and fraudulent representation of Neisser I cannot doubt. Of these pegotis

And we have the evidence



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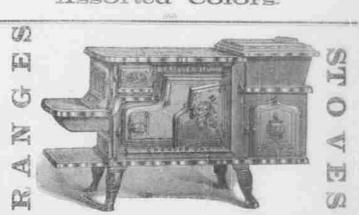
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